

**HAMPTON ZONING BOARD OF ADJUSTMENT  
MINUTES  
Thursday, May 15, 2008**

**Members Present**

Tom McGuirk, Chairman  
John Gebhart  
Vic Lessard  
Bryan Provencal  
Bill O'Brien

**Others Present**

Kevin Schultz, Building Inspector  
Joan Rice, Secretary

Chairman McGuirk called the meeting to order at 7:00 p.m.

Chairman McGuirk introduced the members of the Board.

The Pledge of Allegiance was said.

**PETITION SESSION**

20-08 The petition of John M. Tinios Revoc Trust, Galley Hatch Enterprises, Inc., and Michael & Katherine Tinios for property located at 321 Lafayette Road seeking relief from Article 4.8 to replace the existing cinema with a pharmacy/retail building combining both lots in the process which will result in a reduction in the impervious surface but still exceed the 85% limit. This property is located at Map 175, Lots 13 and 20 in a B/POR zone.

Attorney Peter Saari, Casassa & Ryan, came forward. He introduced Joe Cornelli of Jones & Beach Engineers. Attorney Saari said this is a project that involves only two of the lots. The Galley Hatch Restaurant and Citizens Bank are part of the overall parking scheme. The sealed surface variance is the only one being sought. The parking on these two lots will be improved exceeding the Town requirements. Mr. Cornelli said one of the entrances will be removed and the Galley Hatch entrance will move down. Traffic flow will be greatly improved by having two main parking aisles. This would also allow truck traffic to go around to the back of the retail buildings. With this proposal the sealed surface area would be 92.3%. Attorney Saari said that the cinema had become economically unfeasible.

*Questions from the Board*

Mr. Lessard asked what would happen to the parking if the State widens Route 1. He also asked about the drainage. Mr. Cornelli said they had not decided what they will do about the drainage. If required, this can be treated under the pavement. Mr. Lessard said there is a problem with water at Sacred Heart School. Attorney Saari said that this is the time to fix it.

Mr. O'Brien asked about differences on the drawing the Board received on 1/28/08 and the one distributed tonight regarding the sealed surface area. Attorney Saari said there were some calculation errors on the previous drawing.

Mr. O'Brien asked if the islands were grass covered. Mr. Cornelli replied that they were.

Mr. Gebhart said his biggest concern was storm water.

Mr. Schultz asked how hard it would be to reconfigure and enlarge Galley Hatch's lot. Attorney Saari said that would be problematic.

Attorney Saari said the restaurant is owned by the Tinios family. The other part of the development will be under separate ownership that still includes the Tinios family. There are plans to build a typical CVS pharmacy. Chairman McGuirk asked if the type of building would fit in with the character of the Galley Hatch. Mr. Cornelli replied that it would and is a colonial style building.

*Comments from the Audience*

Walter Kempe, High Street, came forward and said he felt it would be a mistake to close Hampton Cinema. It is one of the few entertainment venues for teenagers, seniors, etc. Mr. Kempe asked if a reasonable offer could be made to keep it as a movie theater.

Chairman McGuirk said there is no way this Board can mandate what people do with their own private land.

Father Maurice LaRochelle, Pastor of Our Lady of the Miraculous Medal Parish, came forward. He said the church has always enjoyed a neighborly relationship with the Tinios family. Father LaRochelle said that the drainage issue is of great concern and he would like to see that addressed if this goes forward. He also said he would like to have a blind barrier along the side adjacent to the school play area. In addition, Father LaRochelle asked that attention be given to a roadway gate between this property and the church's property that could be closed when school is in session.

John Tinios came forward. He said they had looked at other theater possibilities. None were good prospects. The movie industry is changing and these changes have been detrimental to small independent theaters. Technology is changing. Everything will be going digital. Mr. Tinios said this is unfortunate, but there is nothing that can be done.

*Back to the Board*

Attorney Saari said they could get a drainage plan done, address other concerns, and return to the Board.

**Moved** by Mr. O'Brien, seconded by Mr. Provencel, to continue Petition 20-08 at the June 19<sup>th</sup> meeting and be first on the Agenda.

**VOTE: 5-0-0. Motion passed unanimously.**

08-08 The re-hearing of the petition of Christopher Parker & Joann Brooks for property located at 495 Exeter Road seeking relief from Article 3.1 to allow applicant's elderly mother to live in a converted shop in garage, where a second dwelling unit on a lot in this zone is not allowed, upon the conditions that there be no cooking facilities in the unit and the applicants satisfy the building department that the lot has adequate sewage disposal capabilities and that the dwelling unit be removed once the mother no longer resides there. This property is located at Map 36, Lot 1 in a RAA zone.

Christopher Parker, Joann Brooks and Attorney Peter Saari came forward. Attorney Saari said there are two buildings on nine acres housing three people. The issue is cooking facilities. Mrs. Parker, mother of the applicant, did not have a place to live. An apartment was made for her in the second building. The issue before this Board is whether the criteria are met. The zoning is single family residential and that is why the variance is needed for this second unit. The Board of Selectmen did not like the idea of allowing this. One of the concerns was setting a precedent and they felt the Zoning Board could not limit the duration of the variance. Attorney Saari said normally these variances "run with the land", but this case is different because of Mrs. Parker's health. With a recognized physical disability it can be stated that after she leaves the apartment must be removed.

Attorney Saari then reviewed the five criteria. He said he felt the first four were met. As for the 5<sup>th</sup> criteria, Attorney Saari said that if you can state there is a recognizable physical disability, you do not have to find hardship.

*Questions from the Board*

Mr. Lessard said he believes an elderly person who lives at home with their family lives longer.

Mr. Schultz said letters had been received from the contractor, electrician and plumber who did the work stating that the work has been done to code. Mr. Schultz said he would request that these contractors come in and get after-the-fact permits and pay the appropriate fines. The Building Department would then do an inspection. There should also be a letter from the applicants to the Town saying the Town cannot be held responsible for any subsequent event.

Mr. Gebhart said he agreed the permits must be obtained.

*Comments from the Audience*

Bobbie Nudd, Exeter Road, came forward. He said he was in favor of granting this petition and it was the right thing to do.

*Back to the Board*

Mr. O'Brien noted that Article 674:33(V) does state that this can be done in the presence of a recognized physical disability, and is temporary.

Chairman McGuirk said it is necessary to clearly state the reasons why the Board would vote for this.

Mr. O'Brien asked what would happen when and if Mrs. Parker's other son sues if something happens to her while living in the apartment after submitting a formal complaint that questioned the safety to inhabit and meeting of all codes of the dwelling unit.

Mr. O'Brien said he would also like to get the Boards attorney, Peter Laughlin, to further explain the definition of recognized physical disability as it relates to Article 674:33(V). The applicant states under 2a that Mrs. Parker's disabilities, "even if not qualifying as recognized physical disabilities" is a reasonable use of the property. Mr. O'Brien's concern was that if she did not qualify, then all five criteria had to be met and the variance went with the land and could not be tied to Mrs. Parker or be limited in time.

Chairman McGuirk said he had been supporting this because of the ability to sub-divide this into two lots. Mr. O'Brien's concerns regarding the criteria cause him concern.

**Moved** by Mr. Provencal, seconded by Mr. Gebhart, to approve Petition 08-08, subject to the following:

- 1) There must be a letter signed by the applicant indemnifying the Town, Building Inspector and agents, employees, the ZBA and representatives of the Town.
- 2) After-the fact permits must be obtained.
- 3) Permit fees and fines must be paid.
- 4) A deed restriction must be placed on the property stating the living space is to be removed within six months after Mrs. Parker no longer resides in the unit. This is to be filed with Rockingham County Registry of Deeds to ensure the unit is reverted back to workshop/open space (non-living space).

Chairman McGuirk asked if the four criteria had been met. Mr. Lessard, Mr. Provencal and Mr. Gebhart agreed they had. Chairman McGuirk and Mr. O'Brien said they did not know since Attorney Peter Laughlin was not present to address Mr. O'Brien's concern.

**VOTE: 3-0-2 (McGuirk, O'Brien). Motion passed.**

21-08 The petition of Norma Collins for property located at 6 James Street seeking relief from Articles 1.3, 4.5.2, and 4.3 to tear down existing 1-story 2-car garage and construct new 2-story garage in its place within westerly side and rear setback. This property is located at Map 134, Lot 95 in a RA zone.

Norma Collins came forward. Ms. Collins said the present garage is very old and a new one would be an improvement to the level of others in the neighborhood. She went through the five criteria and said she felt they had been met.

*Questions from the Board*

There were no questions from the Board.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

**Moved** by Mr. Provencal, seconded by Mr. Gebhart, to grant Petition 21-08.

Chairman McGuirk asked the Board if they felt the five criteria had been met. All agreed that they had.

**VOTE: 5-0-0. Motion passed unanimously.**

The Petition Session concluded at 10:00 p.m.

**BUSINESS SESSION**

**Adoption of Minutes – April 17, 2008**

**Moved** by Mr. O'Brien, seconded by Mr. Lessard, to adopt the Minutes of April 17, 2008 as amended.

**VOTE: 5-0-0 Motion passed.**

**Motion for Rehearing – 1048 Ocean Blvd. – Petition 14-08**

Chairman McGuirk discussed a letter from Cronin & Bisson, Attorneys at Law representing the Dory-In Condominium Association requesting a rehearing.

A letter from the Conservation Commission was discussed. Chairman McGuirk said this Board was only concerned with the zoning and the setbacks. The concerns of the Conservation Commission are an issue for the Planning Board.

All members agreed that there was nothing new to merit a rehearing (Mr. O'Brien made comments but refrained from voting since he could not address the specific issues raised regarding what occurred during the hearing).

**Moved** by Mr. Provencal seconded by Mr. Gebhart, to deny a rehearing on Petition 14-08.

**VOTE: 3-0-2 (Lessard, O'Brien). Motion passed.**

**Motion for Rehearing – 1048 Ocean Blvd. – Petition 14-08**

Chairman McGuirk discussed a letter from Karin Theodoros, Esq.

All members agreed that there was nothing new to merit a rehearing (Mr. O'Brien made comments but refrained from voting since he could not address the specific issues raised regarding what occurred during the hearing).

**Moved** by Mr. Gebhart, seconded by Mr. Provencal, to deny a rehearing on Petition 14-08.

**VOTE: 4-0-1 (O'Brien). Motion passed.**

Motion for Rehearing – 1048 Ocean Blvd. – Petition 14-08

Chairman McGuirk discussed a letter from Dr. and Mrs. Henry Stoney requesting a rehearing.

All members agreed that there was nothing new to merit a rehearing (Mr. O'Brien made comments but refrained from voting since he could not address the specific issues raised regarding what occurred during the hearing).

**Moved** by Mr. Provencal, seconded by Mr. Gebhart, to deny a rehearing on Petition 14-08.

**VOTE: 4-0-1 (O'Brien). Motion passed.**

Motion for Rehearing – 165 Island Path – Petition 13-08

Chairman McGuirk discussed a letter from Bryan Belanger requesting a rehearing.

All members agreed that there was nothing new to merit a rehearing.

**Moved** by Mr. Provencal, seconded by Mr. Gebhart, to deny a rehearing on Petition 13-08.

**VOTE: 5-0-0. Motion passed.**

A letter from June White was discussed. Mr. O'Brien said from the prospective of this Board no zoning variances were required and it was a Planning Board issue (condo conversion).

Mr. Lessard discussed the signs at Hess on Route 1. Hess had said they would have only one sign. There are many. Mr. Schultz said he would pay them a visit and place a call to the owner of the property.

The Business Session was adjourned at 10:55 p.m.

Respectfully submitted,  
Joan Rice  
Secretary